MISSOURI COURT OF APPEALS WESTERN DISTRICT

JAMES STEPHENSON

APPELLANT,

DIVISION OF EMPLOYMENT SECURITY

RESPONDENT.

DOCKET NUMBER WD76162

DATE: October 22, 2013

Appeal From:

Labor and Industrial Relations Commission

Appellate Judges:

Division Four: James E. Welsh, Chief Judge, Presiding, Cynthia L. Martin, Judge and Terry Tschannen, Special Judge

Attorneys:

John J. Ammann and Paul L. Schmitz, St. Louis, MO, for appellant.

Bart A. Matanic, Jefferson City, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS WESTERN DISTRICT

JAMES STEPHENSON,

APPELLANT,

v. DIVISION OF EMPLOYMENT SECURITY,

RESPONDENT.

No. WD76162

Labor and Industrial Relations Commission

Before Division Four: James E. Welsh, Chief Judge, Presiding, Cynthia L. Martin, Judge and Terry Tschannen, Special Judge

James Stephenson appeals from the Labor and Industrial Relations Commission's decision that affirmed and adopted the decision of the Appeals Tribunal, which concluded Stephenson was ineligible for unemployment benefits because he voluntarily left his employment without good cause. Stephenson argues that the Commission erred in three respects, but his first point relied on is dispositive. Stephenson claims that the Commission erred in failing to consider the threshold issue of whether Stephenson's employment was unsuitable before it determined that he did not have good cause to quit work. The Division of Employment Security argues that Stephenson's first point relied on is unpreserved for appeal because Stephenson did not raise the issue of suitability before either the Appeals Tribunal or the Commission.

REVERSE AND REMAND FOR PROCEEDINGS CONSISTENT WITH THE OPINION.

Division Four holds: Section 288.050.1, by its express terms, requires the Appeals Tribunal and the Commission to consider the threshold issue of whether a job was suitable before it can determine if the claimant is ineligible for unemployment benefits if the employee voluntarily left the position within twenty-eight calendar days of the first day of work. As such, "suitability" is encompassed within the broader inquiry of eligibility for unemployment benefits following a voluntary quit, and is essential to that inquiry when the employee quits within twenty-eight days of the first day of employment. By challenging the Appeals Tribunal's decision that he voluntarily quit without good cause in his appeal to the Commission, Stephenson sufficiently preserved whether the Commission followed the law in its application of section 288.050.1.

One of Stephenson's supervisors testified that Stephenson was employed with Kendall Equipment Material Handling, LLC ("Kendall Equipment") from September 10, 2012, to October 4, 2012. At that point, the referee for the Appeals Tribunal was charged with the knowledge that Stephenson was employed by Kendall Equipment for less than twenty-eight calendar days, and the referee was required to amend the issues for decision to include whether Stephenson's position with Kendall Equipment was suitable. Instead, the Appeals Tribunal

issued a decision that solely discussed whether Stephenson had good cause to leave his job with Kendall Equipment. By affirming and adopting the Appeals Tribunal's decision, the Commission erred in failing to consider whether Stephenson's work with Kendall Equipment was suitable. Thus, we must reverse the Commission's decision and remand the cause to the Commission with directions to order another hearing before the Appeals Tribunal for consideration of the suitability of Stephenson's employment with Kendall Equipment.

Opinion by Cynthia L. Martin, Judge

October 22, 2013

This summary is UNOFFICIAL and should not be quoted or cited.